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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,610	12/15/2000	Chyi-Cheng Chen	20529/111697	2197

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EXAMINER

KWON, BRIAN YONG S

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 06/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/738,610

Applicant(s)

CHEN ET AL.

Examiner

Brian S Kwon

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2001 and 11 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions Acknowledged***

Acknowledgement is made of applicant's election of Invention Group I (claims 1-13), the requirement having been traversed in Paper No. 8. Claims 14-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Priority***

Acknowledgment is made of the receipt of the certified copy of the priority document EP 99125639.7 and the applicant's claim for foreign priority based on an EP 99125639.7 has been acknowledged.

### ***Summary of Action***

Applicant's arguments in response to Office Action filed December 15, 2001 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (US 4605666), and further in view of Newlin (US 3615591), Chiralt et al. (1999 IFT Annual Meeting) and Hussaini et al. ("A Guide to Halal Food Selection", 1993).

Claims read on a powder or granule or tablet composition comprising L-ascorbic acid and/or a pharmaceutical acceptable salt thereof, and about 0.1 to about 10% by weight of pectin, calculated based on the total weight of the composition thereof. Further limitations include a sodium ascorbate as the L-ascorbic acid salt in claim 3; a citrus pectin as the pectin in claim 4; and a lubricant (i.e., stearic acid, a magnesium salt of stearic acid, a calcium salt of stearic acid, and glyceryl behenate 45) and an excipient (i.e., dextrinized sucrose, microcrystalline cellulose, and starch), as a secondary ingredient in claim 10 and 13, respectively.

Schmidt teaches or suggests a powder or tablet composition, comprising a water-soluble vitamin (i.e., sodium ascorbate, ascorbic acid, calcium ascorbate, etc...); a binder (i.e., microcrystalline cellulose, etc...); a lubricant (i.e., stearic acid, magnesium stearate, calcium stearate, etc...) and an excipient (i.e., pectin, starch, etc...). See from column 1, line 36 to column 2, line 53 as well as Example 1-5. The reference discloses that "the components described herein are added in amounts such that the final powder formed will contain at least 80% (preferably at least 90) percent by weight of the water soluble vitamin, less than 15 (preferably less than 9) percent by weight of binder...0.2 to 5 percent by weight of the lubricant

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and less than 3 percent of other excipients...those skilled in the art may discover better proportions with them and for specific purposes” (from column 2, line 54 to column 3, line 2).

Either Newlin or Chiralt teaches the use of pectin as an effective anti-browning agent.

Hussaini teaches the use of pectin as an effective color-improving agent.

The teaching of Schmidt differs from the claimed invention in 1) the specific amounts of pectin in the composition, about 0.1 to about 10%, more specifically about 0.5 to 5%, based on the total weight of the composition; 2) 95-99% by weight of L-ascorbic acid and/or a pharmaceutically acceptable salt; 3) the use of citrus pectin; and 4) the functional characteristic of pectin as a binder.

Above reference (Schmidt) makes clear that the selection of secondary ingredients such as microcrystalline cellulose, stearic acid or magnesium stearate and pectin in vitamin C (e.g., sodium ascorbate and ascorbic acid) powder or tablet is old and well known in the art.

Furthermore, Schmidt makes clear that optimization of amounts of known active and secondary ingredient(s) in a composition is well considered within the skill of the artisan.

One having ordinary skill in the art would have been motivated to employ pectin in vitamin C composition (e.g., sodium ascorbate and ascorbic acid) such that the stability of color of the claimed composition would be significantly improved. One having ordinary skill in the art would have been motivated to select well known anti-browning agent or color improving agent such as pectin to prevent browning or improve coloring of claimed composition containing L-ascorbic acid and/or its salts. Although the references are silent about the use of pectin as a binder, such property or characteristic must be inherent to the pectin. Therefore, the references make obvious the claimed invention.

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Additionally, the selection of citrus pectin among pectins is well considered within the skill of the artisan, absent evidence to the contrary.

### ***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (703)308-5377. The examiner can normally be reached Tuesday through Friday from 9:00 am to 7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax number for this Group is (703) 308-4556.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Brian Kwon

**ZOHREH FAY  
PRIMARY EXAMINER  
GROUP 1600**

